

BEFORE THE

Federal Communications Commission

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WASHINGTON, D. C. 20554

JUL 22 1994

In the Matter of

Reexamination of the Policy
Statement on Comparative
Broadcast Hearings

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FEDERAL COMMUNICATIONS COMMISSION
GC DOCKET NO. 92-52 SECRETARY

To: The Commission

COMMENTS

Breeze Broadcasting Company, Ltd., by its attorneys, hereby offers its comments in response to the Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

Breeze is an applicant for a construction permit for a new FM station on Channel 237A in Gulf Breeze, Florida (MM Docket No. 87-119). Breeze is now in the twelfth year of its pursuit of the station in Gulf Breeze, including its participation in the rule-making proceeding which led up to the allotment of the FM channel to Gulf Breeze. It has been over ten years since Breeze filed its application for the channel, and nine years since a host of competing applications were filed in response to a cut-off list announcing the availability of the Breeze application for final processing.

1 It is assumed that the Commission's present General Counsel has recused himself from matters involving Breeze since he was its counsel at the time the Breeze application was filed with the FCC.

Of the sixteen challengers who filed applications for this permit in 1985, only two remain. The remaining fourteen other filers have either had their applications dismissed without consideration, or have settled with Breeze.

The Breeze application was granted by the decision of Administrative Law Judge Joseph Gonzalez on December 26, 1989. Despite two instances of remand to investigate the qualifications of competing applicants, that grant still stands, subject to pending applications for review with the full Commission. See the Review Board's Decision, 8 FCC Rcd. 5578 (1993).

Considering the efforts expended by Breeze to demonstrate its qualifications for the permit over the last twelve years, and the plain superiority of Breeze's proposal in public interest terms, it would be unfair indeed if the Commission adopted some radically different system at this point which resulted in a grant of the Gulf Breeze permit to another applicant.

Of the three remaining applicants for the Gulf Breeze authorization, one has been disqualified on financial grounds, and the other proposes no integration of its ownership into the management of the station. Breeze is the only one to have received credit for the plan of all its voting owners to participate in the daily management of the station.

That proposal was not some phony arrangement ginned up for the purpose of impressing the Commission on paper. It did not generate any artificial minority preference, as indeed none of the principals of the Gulf Breeze applicants are minorities. (One of

the two general partners of Breeze, however, is a woman, the only female participant in the proceeding at this point.)

To the extent that the Second Further Notice indicates an intent on the part of the Commission to abandon utterly any reliance on integration of ownership and management, Breeze would suggest that the Commission has misread the Court's mandate in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). There, the Court held that the Commission had failed to justify continued application of the integration criterion because it had undertaken no inquiry to determine whether integration produced any benefit to the public. The Court did not hold that integration is a useless criterion or an unlawful criterion for all time, only that the Commission to date has failed to take the steps necessary to justify continued reliance on integration.

A wholesale abandonment of the integration criterion places at risk the constitutionality of the minority preference. In Metro Broadcasting v. FCC, 497 U.S. 547 (1990), the Supreme Court, by the narrowest of margins, upheld the Commission's minority preference only because it was tied to the integration of ownership and management, thereby assuring that the owners would be in a position to reflect their viewpoint in the programming of the station. There is a substantial risk that elimination of credit for management participation would therefore render application of any minority preference violative of the constitutional guarantee of equal protection.

In order to verify that integrated owners with proper preparation have, in the past, succeeded in a superior level of service to their communities, the Commission should institute a survey of all (or a random proportion of existing broadcast facilities. Those whose owners participate in management actively should be invited to describe whether and how their participation makes a positive difference in station operation and its level of community service.

It might be thought that the invitation made in footnote 4 to the Second Further Notice of Proposed Rulemaking would be adequate to achieve that purpose. However, it is doubtful that most station owners have, in the past four weeks, had the opportunity even to become aware of the fine print of that footnote. The ones who are operating stations now are not the ones most keenly interested in the comparative process in any event. Therefore, there is little reason that this invitation would have come to their attention merely in the FCC's daily releases. Most stations do not subscribe to the daily releases.

Nevertheless, Breeze would point, for example, to the well-known experience of station WCYB-TV in Boston. The owners of that station integrated themselves as promised in the operation of the station, creating what was universally regarded as the television operation in Boston that was most responsive to the needs of the community. The station virtually invented the concept of the local news magazine, and won many awards for the way in which its programming met community needs. The contrast with the former,

non-integrated owners of the station could hardly have been more striking.

Another example is station KCTM, Rio Grande City, Texas. The owner of that station, Gustavo Valadez, Jr., was one of the first minorities to receive a construction permit grant from the Commission following adoption of the Policy Statement on Minority Ownership of Broadcast Facilities. Although his company, Sound Investments Unlimited, Inc., did not receive the grant of the KCTM construction permit through a comparative proceeding, Mr. Valadez has nevertheless devoted himself over the last nine years and more on a full-time basis to the operation of KCTM.

KCTM is the only commercial broadcast facility in Starr County, Texas, the poorest county in the United States. KCTM has become an indispensable vehicle for dissemination of local news and information in the local community. There can be little doubt but that Mr. Valadez' daily presence at the station is a key element of its success in terms of serving the community.

In this regard, it should be noted that Mr. Valadez had a long record of broadcast experience prior to his accession to the ranks of broadcast owners. If the Commission were to survey the ranks of those who have received construction permits in recent years, Breeze is confident that it would find that those who had prepared themselves for that role through experience in the industry prior to the award of the construction permit are more likely to have succeeded both in overall station operation, and in the fulfillment of their integration pledges.

Another example of success is television station WGTW, Channel 48, Burlington, New Jersey. The sole voting owner of Brunson Communications, Inc., which operates WGTW, is Dorothy Brunson. Ms. Brunson is probably the only black woman presently operating a television station in the United States, or at least the only one who is fully empowered to implement her own policies at the station. It is the only television station in its market controlled by a minority. Her company won the permit for WGTW in the comparative process, and in the two years since the station went on the air, Ms. Brunson has worked far more than full-time in order to make the station a success.

Without the integration preference, Ms. Brunson would not have had that opportunity. (Of course, she had prepared herself by gaining over twenty years experience in broadcasting before starting WGTW.) Therefore, the Commission owes it to her and others like her to conduct a broader survey the effects of management participation by voting station owners.

No matter what the Commission ultimately does with any preference for management participation, it should ensure that applicants are given increased credit for broadcast experience, particularly experience gained in recent years. Experience accrued thirty or forty years ago, when the industry was substantially different, is of relatively little worth now.

As to preferences for local residence, the Commission should not adopt a hypertechnical standard whereby an individual who resides within the city of license is given a preference substan-

tially greater than one who resides merely a few miles away, but still within the general market area. If the Commission were awarding a new license for a station in Bethesda, should not disadvantage an applicant who has extensive knowledge of the vicinity, but happens to reside in Rockville. Just as radio signals extend beyond the bounds of artificial lines drawn on a map, prospective station owners can easily gain knowledge of the problems of a wider area than the immediate municipality within which they reside.

The facts as to the above criteria are already fully developed in the record of the case in which Breeze is an applicant, and in other comparative cases where the record is closed. There is no need for further proceedings that would only exacerbate the cost of the comparative process to the taxpayer and the applicant.

Thus, the Commission should limit its refinement of the comparative process to, at most, a different weighting of the factors already deemed relevant to the choice among applicants. Opening up the proceedings in which the hearing record is already closed would only produce chaos. Nor should amendments be allowed which fundamentally change the nature of an applicant's proposal.

Accordingly, the Commission should take adequate steps to demonstrate that the award of preferences for integration of ownership and management do provide benefits to the public. At the same time, the Commission should strengthen the credit awarded for broadcast experience so that those who do receive construction permits will be more likely to effectuate their proposals and

provide a service that from the beginning is the product of adequate preparation for the role of station manager.

Respectfully submitted,

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July 22, 1994